THE IMPACT OF THE IMPARTIAL DUE PROCESS HEARING FOR EXCEPTIONAL STUDENTS IN FLORIDA 1978-79

By

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The changes in the field of special education due to litigation and legislation extending civil rights to the handicapped have been significant since the late 1960s. The guarantee of procedural due process in educational decision-making for exceptional children was established in the landmark cases of Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania and Mills v. District of Columbia. The due process requirements established by litigation were soon incorporated into state and federal legislation, notably Public Law 94-142.

Public Law 94-142, which became law in 1975, included detailed requirements of procedural due process, such as an impartial hearing if a parent disagrees with the initiation or change in a child's identification, evaluation, placement, or provision of a free, appropriate public education. Florida statutory changes to bring the

state into compliance with the provisions of Public Law 94-142 were made by the legislature in 1978.

The rule implementing the impartial due process hearing procedure for exceptional students was promulgated on August 8, 1978, by the Florida Cabinet. Since the promulgation of the rule through August 31, 1979, 34 hearings were held in Florida school districts under the auspices of the Division of Administrative Hearings, Department of Administration, and decisions were rendered in 16 of those cases.

The purpose of this study was to collect and analyze data from the 16 hearings in which decisions were rendered during the first year of experience with the impartial due process hearings in Florida. The hearings had occurred in 11 Florida school districts, including large, medium, and small sized districts when assigned by pupil enrollment. The hearing documents were collected, abstracted, and salient features described. Interviews were held by the author with the district directors of exceptional student education in the districts in which the hearings occurred.

The most frequent issue in the hearings was request for payment of private school tuition. The second most frequent issue was disagreement about classification of the child as exceptional. The category of exceptionality represented most often in the hearings was emotionally handicapped.

Twelve of the hearings were initiated by the parent. The four hearings which were initiated by the school districts involved parental regusal to give consent for placement (three), and appropriateness of a district's evaluation (one).

All of the school districts were represented by legal counsel in the hearings, but six of the parents were not represented by an attorney. Three methods of securing legal representation were used by the districts. The most common method was to secure the services of the school board attorney who represented the district in other matters. Three of the four large districts were represented by the legal counsel who was part of the district's staff. The least frequently used method of employing counsel was by contracting with an attorney for the specific purpose of representing the district in the due process hearing; this was also found to be the most expensive method when mean costs were compared.

The district directors reported frequent use of informal mediation or conciliation conferences prior to due process hearings. They estimated that a total of 90 cases would have gone to formal hearing had mediation not been effective in resolving the disputes during 1978-79.

Implications for further study were made, including the need for investigating the perceptions of the parents who were involved in the hearings, and examining the follow-up of the decisions rendered in the 16 hearings to evaluate the progress of the children and the recividism rate. A recommendation was made to add resources to the Bureau of Education for Exceptional Students, Florida Department of Education, to disseminate information about hearing decisions and to provide assistance to districts in mediation.

CHAPTER I

INTRODUCTION

Due process has its roots in the United States Constitution, which in the Fifth Amendment provides that "no person shall be deprived of life, liberty, or property, without due process of law," and in the Fourteenth Amendment, which provides that "no state shall . . . deprive any person of life, liberty, or property without due process of law." The two types of due process are substantive and procedural. Alexander, Corns, and McCann (1975) described substantive due process rights as those generally encompassed by the First Amendment freedoms of religion, speech, press, and assembly (p. 177). Substantive due process was first related to education and the due process clause of the Fourteenth Amendment in the Supreme Court decision in Meyer v. Nebraska (Note 1) in 1923. Alexander, Corns, and McCann (1969) stated the requirement necessary to satisfy the Constitutional right:

> If a state is going to deprive a person of his life, liberty, or property, the state must have a valid objective and the means used must be reasonably calculated to achieve the objective. (p. 540)

Although procedural due process rights were first thought to be applicable only to judicial proceedings, Alexander et al. (1975)

noted that administrative agencies, including public schools, must afford procedural due process when "the potential loss of a fundamental right is at stake" (p. 177). Three basic factors of procedural due process are proper notice, an opportunity to be heard, and a fair hearing (Alexander et al., 1969, p. 539). Abeson (1973) defined procedural due process as "the right to have laws applied with adequate safeguards so that a person will not be subject to arbitrary and unreasonable actions" (p. 5). In education, cases have arisen around the issues of discipline, freedom of expression, marriage and pregnancy, confidentiality, and appearance, while in special education the majority of cases have centered around procedural due process as it relates to exclusion, identification, evaluation, and appropriate placement issues of exceptional students.

The landmark case which established procedural due process rights of retarded children in the public schools was the Pennsylvania Association for Retarded Citizens (PARC) v. Commonwealth of Pennsylvania (Note 2). PARC was a class action suit brought by the parents of 13 individual retarded children and the Pennsylvania Association for Retarded Citizens on behalf of all mentally retarded persons of school age in the Commonwealth of Pennsylvania. At issue were four state statutes which permitted exclusion of certain retarded children from the public schools. The consent agreement which was accepted by the court in settlement of the case included a 23-step due process procedure, including the right to an

impartial hearing. The PARC case was supported in Mills v. District of Columbia (Note 3), a 1972 decision which extended to all handicapped children in the District of Columbia the procedural safeguards which had been detailed for retarded children in PARC.

Soon after this initial wave of litigation, state and federal legislation began to incorporate the due process requirements established by litigation into state and federal statutes. Of particular importance was Public Law (P.L.) 93-380, the Education Amendments of 1974 to the Elementary and Secondary Education Act, which required the plans submitted from the states to include provisions for guaranteeing procedural safeguards for handicapped students in order for a state to maintain its allocation of federal funds for the handicapped. P.L. 94-142, which became law in 1975, included detailed requirements of procedural due process, such as prior notice before a school proposes (or refuses) to initiate or change a child's identification, evaluation, placement, or provision of a free appropriate public education, including an opportunity for an impartial hearing if the parent disagrees. Since P.L. 94-142 regulations contained a provision that decisions rendered in the impartial hearings are binding, subject to review by the state education agency or judicial action, the findings resulting from such impartial hearings have significant programming implications for school systems (Stetler, Note 4).

Within the context of the federal judicial and legislative activity, the legislature of the state of Florida passed a revision of Statute 230.23 (4)(m) in 1978 to bring the state into compliance with P.L. 94-142. This amendment included the language of procedural safeguards in identification, evaluation, and placement of exceptional students, including provisions for an impartial due process hearing. The hearing officer was not to be an officer or employee of the school board involved in the educational program for the child, and the parent was given the right to request that the hearing officer be from the Division of Administrative Hearings (DOAH), Department of Administration. The statute also exempted the impartial hearings for exceptional students from the provisions of the state's administrative procedures act "to the extent that the state board adopts rules establishing other procedures" [Florida Statute 230.23 (4)(m)].

The Florida Cabinet passed a revision of State Board of Education (SBE) Rule 6A-6.331 (6) on August 8, 1978, which covered initiation of an impartial hearing, selection of the hearing officer, duties and responsibilities of the hearing officer, conduct of the hearing, transmission of findings and decisions, and impartial review by the Florida Commission of Education. Procedures for compliance with the revised statute and rule were required to be included in the 1978-79 document submitted by each of the 67 school districts in Florida to the Bureau of Education for Exceptional Students (BEES), Division of Public Schools, Florida Department of Education, in order to participate in the state's educational finance

distribution. BEES sponsored a special study institute in August, 1978, for district directors of exceptional student education to give assistance with the new due process requirements.

A hearing was held in Clay County on October 23, 1978, the first such under the new procedures. Since the promulgation of the rule on August 8, 1978, through August 31, 1979, 40 hearing requests were made to the DOAH. As of August 31, 1979, 34 hearings had been held, with decisions rendered in 16 of these cases (Wells, Note 5).

Limited information was available to the school systems, parents, and advocacy groups regarding issues and outcomes of these hearings. No systematic investigation had yet been undertaken, although the experience gained and the precedents established have implications for all who are involved in the educational process for exceptional students in Florida.

The Problem

Statement of the Problem

The focus of this investigation was on the impartial due process hearings for exceptional students in Florida, and their impact on the school districts in which they occurred. Specifically, answers to the following questions were sought:

1. What have been the issues in the hearings?
2. What have been the findings of fact and the hearing orders?
3. To what extent have the decisions rendered been appealed?

4. To what extent have mediation efforts been made in the cases that have gone to hearings, and what kind of mediation or conciliation conferences are generally done in the districts?
5. From the perception of district directors of exceptional student education, to what extent has the use of attorneys as hearing officers been satisfactory?
6. What have been the direct and indirect costs of the hearings to the school districts, and what source of funds has been used for the direct costs?
7. To what extent have administrative procedures been changed in the school districts due to the experience of participation in a formal due process hearing?

Delimitations

The following confinements were observed in the investigation:

1. The investigation was limited to the impartial due process hearings held in Florida, with a decision rendered, from August 8, 1978, through August 31, 1979. All hearings meeting the time constraints were included in the study.

2. Sources were limited to the written findings of fact and orders of the hearing officers which were available in the Florida Bureau of Education for Exceptional Students; to evidence of fiscal expenditures from the directors of exceptional student education

in the districts in the study; and to personal interviews by the investigator with the directors of exceptional student education in the districts where the hearings were held.

Limitations

This study is ex post facto in design and therefore no internal validity is claimed. External validity is claimed for only those school districts in Florida with similar issues in question, and whose impartial hearing officer is from DOAH.

Justification for the Study

The field of special education changed rapidly after the late 1960s, when the impact of litigation and legislation extending civil rights to the handicapped began to be felt. Until the late 1960s, court decisions supported the exclusion of some handicapped children from the public schools, viewing school enrollment as a privilege to be bestowed on those who could benefit from education and whose presence would not be a detriment to the best interest of the school. In an early exclusion case, Watson v. City of Cambridge (Note 6), the Supreme Judicial Court of Massachusetts held in 1893 that a pupil "too weak-minded to derive profit from instruction" could be legally excluded from public education. Court decisions, however, during the period 1970-1979 established the responsibility of a state to provide an educational opportunity to all of its school children, including the handicapped, if it undertakes to provide an education to any.

One of the most important ingredients in providing an education for exceptional children is the process by which decisions are made about the programs to which they are assigned. If adequate procedural due process safeguards are not observed, the possibility of arbitrary or capricious decision making exists. The court mandates, along with federal and state legislation, have established the impartial due process hearing as a cornerstone in the extension of procedural due process safeguards (Buss, 1975; Theimer & Rupiper, 1975). It is usual for the judiciary to require exhaustion of all administrative remedies before the courts will intervene. Therefore, if a state established adequate procedural due process procedures to protect the rights of exceptional children and their parents, costly and lengthy litigation might be avoided.

There are differences in the way that the states have addressed some components of the impartial due process hearing opportunity. Some of the variables are the manner in which the states deal with the selection of the hearing officers, the minimum requirements for their training, and method of payment of direct costs (Kervick & Schultz,1978, pp. 7-9). Much discussion has centered around the issue of whether the hearing officer should be an attorney or a program professional (Douglass, Note 7). In Florida, all of the hearing officers during the time period under investigation have been attorneys from DOAH (Cullar, Note 8), so the data collected from this study can be compared to other states where non-attorneys are used as hearing officers.

Another variable in the implementation of the formal hearing procedure is the extent to which the states employ an optional prehearing conciliation or mediation process. Some states, notably Connecticut and Massachusetts, have employed personnel specifically for the purpose of facilitating attempts to resolve conflicts without the necessity of the full, formal due process impartial hearing (Bolick, 1974; Moore, 1978; Soeffings, 1975; Turnbull, 1975). Massachusetts's Appeal News (Note 9) reported the employment of nine full-time regional representatives in the Bureau of Special Education Appeals for the purpose of meeting with parties prior to hearing to attempt to arrive at resolution. In Connecticut, where personnel were employed by the state department of education to facilitate an optional pre-hearing mediation conference, only five of 47 cases went to formal hearing (Gallant, Note 10).

Although the Florida Bureau of Education for Exceptional Students encourages informal mediation conferences prior to an impartial hearing, no personnel have been employed at the state level to facilitate utilization of this route (Stetler, Note 4). A review of the data collected in this study provides an indication of the extent to which informal mediation has occurred in these districts prior to formal hearings.

The legal issues in special education placements and programs have caused a great deal of concern among professional educators. Wells (Note 5) reported that requests for current and accurate information regarding the impartial due process hearings and their

outcomes have been received, but the Bureau of Education for Exceptional Students does not have the personnel necessary to devote the time needed to collect and analyze the data from the districts. Another justification for this study was that the information could be made available through the resources of the Florida Department of Education to be distributed and utilized by practitioners in the field, i.e., it was intended that the study could be used as a source document.

It was also intended that this study will become part of the growing body of knowledge that is available in the interpretation of the rights of handicapped or exceptional students. A more complete picture of the procedural and programmatic requirements which should be made available by school districts in order to insure the rights of exceptional students should result from this study.

Assumptions

Theoretically, it is assumed that better information leads to better decision making by educators, and that better decision making results in improved educational opportunities for children.

There are at least two obvious sets of assumptions in this investigation. One set of assumptions relates to the value of this study, and was thoroughly explored in the justification section. The second set of assumptions is methodological, and relates to the capacity of the investigator. The investigator was an experienced district director of exceptional student education.

Definition of Terms

Direct costs of impartial hearings. The direct costs of impartial hearings include the attorney's fee for representing the school district in the hearing, and costs for providing the required transcripts.

District director of exceptional student education. This is used as a generic term to refer to the person who is designated by the superintendent of the school district to be directly in charge of exceptional student education.

Exceptional children. In Florida Statute 288.041 (10) exceptional students are defined as

> any child or youth who has been certified by a specialist qualified under regulations of the state board to examine students who may be unsuited for enrollment in a regular class of the public schools or is unable to be adequately educated in the public schools without the provision of special classes, instruction, facilities, or related services, or a combination thereof. The term "exceptional student" includes the following: the mentally retarded, the speech impaired, the deaf and hard of hearing, the blind and partially sighted, the crippled and other health-impaired, the emotionally disturbed, those with specific learning disabilities, and the gifted.

Handicapped children. The federal definition of handicapped, found in Section 121a.5 of the rules and regulations of P.L. 94-142, means those children

> being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

Impartial hearing. An impartial due process hearing is a formal hearing conducted by an impartial hearing officer to resolve disagreement between a school district and a parent or guardian over an issue of evaluation, placement, or provision of an appropriate educational program for an exceptional or handicapped child.

Indirect costs of impartial hearings. The indirect costs of impartial hearings include the estimated cost of district and school staff in preparation for an attendance at an impartial hearing. The primary cost is anticipated to be the time of the district director of exceptional student education, and will be estimated at current salary schedules.

Procedural due process. Procedural due process is defined by Ballentine (1969) as "the regular course of administration of justice . . . according to those rules and principles which have been established for the enforcement and protection of private rights" (p. 1000). The essential elements of procedural due process are notice of charges, the opportunity to be heard, and an impartial tribunal (Black, 1968, p. 590).

Substantive due process. Substantive due process is described by Alexander et al. (1969) as a protection against arbitrary legislation which requires that

> if a state is going to deprive a person of his life, liberty, or property, the state must have a valid objective and the means used must be reasonably calculated to achieve the objective. (p. 540)

CHAPTER II

REVIEW OF THE LITERATURE

The body of literature which has been written about due process and exceptional students has become extensive in the 1970s. Authors have approached the subject from the perspectives of litigation, federal and state statutory provisions, civil rights of the handicapped, and issues specific to the implementation of the impartial hearing procedures. A competer search was made to locate relevant literature in the Educational Resources Information Center file, and in the Exceptional Child Clearinghouse file. Published books in the university library were also used in the compilation of literature. This review focuses on the historical evolution of the right of the handicapped child from exclusion to a free, appropriate public education. The review is organized in the following sections: Judicial History of Due Process Related to Handicapped Children, Federal Legislation and Due Process Related to Handicapped Children, Florida Litigation and Legislation Related to Due Process, Issues Dealing with Impartial Hearing Procedures, and the Literature in Retrospect.

Judicial History of Due Process Related to Handicapped Children

Until the 1970s, handicapped children had limited opportunities and no guarantees of a public education protected by the courts,

A 1933 publication on public schools and the courts set forth the legal reasoning which prevailed until the early 1970s:

> Since attendance at the state schools is essentially a privilege and not a right, the state may authorize its agents to exclude all children who do not meet the requirements established by the state. Consequently, a school board usually has the implied power to reject applicants for admission who do not conform to the reasonable and necessary requirements established by the board. (Edwards, 1933, p. 500)

The primary concern for the general effect on the schools and "normal children" was seen in the decisions in Ward v. Flood (Note 11) and in Watson v. City of Cambridge (Note 6). In a Massachusetts case in 1941, the judge stated

> The power of a school committee to exclude children from school is very broad and is to be exercised for the best interests of the pupils. . . . Failure of a child to maintain a standard of scholarship may justify exclusion, though such an act is not misconduct. (Committee v. Johnson, Note 12).

At late as 1958, judicial decisions were being written that affirmed capacity as inherent in the right to participate in a public school education (Department of Public Welfare v. Haas, Note 13). In the late 1960s, however, a reversal of previous precedent began. In Utah, a United States District Court Justice ruled in Wolf v. The Legislature of the State of Utah (Note 14) that two trainable retarded students were entitled to a free public education, since Utah's constitution established a free education within the framework of Utah's public schools.

In January, 1971, the Pennsylvania Association for Retarded Children (PARC) filed suit against the Commonwealth of Pennsylvania

(Note 2), challenging four statutes that were alleged to have been applied to exclude certain retarded children from the public schools. One of the contested statutes postponed eligibility for admission to public schools until a mental age of five years was attained; another statute excused a child "unable to profit from school from compulsory school attendance." PARC attorneys argued that the statutes violated constitutional safeguards based on both the due process standard, by not providing for notice or hearing before either exclusion or labeling as retarded, and the equal protection standard, "because the premise of the statute which necessarily assumed that certain retarded children are uneducable and untrainable lacked a rational basis in fact" (Collings & Singletary, 1973, pp. 7-8).

PARC was resolved in a consent agreement entered by the parties and the court rested on the following findings:

> 1. Expert testimony in this action indicates that . . . all mentally retarded persons are capable of benefiting from a program of education and training;
> . . .
> 2. The Commonwealth of Pennsylvania has undertaken to provide a free public education to all its children between 6-21 and further has undertaken to provide education and training for all of its mentally retarded children.
> 3. Having undertaken to provide a free public education to all its children, including its mentally retarded children, the Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training.
> 4. It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education. (PARC v. Commonwealth of Pennsylvania, Note 2, p. 307)

The 23-step due process procedure detailed in the PARC consent agreement established the detail in which procedural safeguards were to be followed, including notice, right to a hearing, right to counsel at the hearing, the right to present evidence, the right to an independent evaluation, and the right to an impartial hearing officer (Riley, Nash, & Hunt, 1978, pp. 9-10). Although PARC dealt specifically with the mentally retarded, a decision soon followed in Mills v. District of Columbia (Note 3) which extended similar due process safeguards to all handicapped children in the District of Columbia schools. Judge Joseph C. Waddy wrote

> Not only are plaintiffs and their class denied the publicly supported education to which they are entitled but many are suspended or expelled from regular schooling or specialized instruction or are reassigned without any periodic hearing and are given no periodic review thereafter. Due process of law requires a hearing prior to exclusion, termination of (sic) classification into a special program. (Mills v. District of Columbia, Note 3, p. 875)

The assumption of education as a fundamental interest and therefore entitled to constitutional protection had been based on precedent established for equal protection claims dating from Brown v. Board of Education (Note 15). In 1973, however, the Supreme Court in Rodriguez v. San Antonio Independent School District (Note 16) ruled that education is not one of the fundamental rights explicitly or implicitly guaranteed by the United States Constitution. Rodriguez left proponents of legal action on behalf of exceptional students to the state courts and to the use of the due process clause, instead of the equal protection clause of the Fourteenth Amendment.

Another Supreme Court decision which strengthened the handicapped child's procedural due process claims was rendered in Goss v. Lopez (Note 17). In Goss, the Supreme Court held that public school students have a "property" interest in public education, and when a state established a public school system in its state constitution, the right to full participation in its educational system cannot be withdrawn without adequate procedural due process.

The Goss decision also cited a "liberty" interest: "Where a person's good name, reputation, . . . is at stake because of what the government is doing to him, the minimum requirements of this clause (due process) must be satisfied" (Goss v. Lopez, Note 17, p. 574). Bersoff (1978) applied this principle to special education:

> schools cannot label children as handicapped unless there is some form of impartial hearing to substantiate the stigmatization that may result. While there may be some benefit to children being labeled as retarded, emotionally disturbed, brain injured, or learning disabled in that they may fall under statutes granting rights to such person, such labeling by school systems is considered to be an "official branding" by that state because of the many long term potentially negative consequences that may result. For example, a record of impairment may prevent access to some forms of future employment, may increase insurance rates, or be used as evidence of incompetence to make one's own decisions. The Constitution thus prevents the school from unilaterally denominating children as handicapped. (p. 67)

Use of the judiciary, particularly in the domain of constitutional rights as an avenue of social change,is an established tradition in the United States (Kuriloff, 1975). In the securing of rights of minority groups, the judicial branch has consistently been the cutting edge of change. Gilhool (1976), an attorney who

argued in PARC, wrote of the advantage in the use of the judiciary in securing rights for handicapped children:

> The courts also have slightly different powers than do the legislative and the executive. For example, it is in the art of accomodation that characterizes decisions in the legislature and in the executive. In the courts it is not a question of accomodation; it is the art of the necessary. If the Constitution requires it, if the statutes require it, it shall be done; there is no question of accomodating. (p. 15)

There are some things that can best be accomplished through judicial intervention. Substantive reform can be mandated, where there is an issue of abridgement of constitutional rights, or where administrative remedies have proven ineffective in enforcement of constitutional or statutory rights. Also, procedural safeguards can be mandated to help in implementation of substantive reform. Kuriloff, True, Kirp, and Buss (1974) acknowledged these positive aspects of change through the judicial system, but cautioned that courts cannot replace the responsibility of educators of exceptional children and advocacy groups in filling in the time and expertise needed to implement educational change.

Kirp, Kuriloff, and Buss (1975) summarized the limitations of court-initiated change:

> First, change in legal standards, whatever its source, does not ensure altered school behavior. Judicial policy making is limited, among other factors, by a structured inability to shape disputes, control resources, select among policy alternatives, or monitor or readily revise rulings to adjust to altered experiences. (pp. 379-380)

Federal Legislation and Due Process Related to Handicapped Children

The first federal statute which impacted significantly on the states in the area of procedural due process safeguards for the handicapped was Public Law (P.L.) 93-380, the Education Amendments of 1974 to the Elementary and Secondary Education Act. In Section 612, requirements were set forth for the states which had to be met prior to the distribution of funds from the act. The annual program plan from the states had to include provisions for insuring procedural safeguards in identification, evaluation, and educational placement of handicapped children. Prior notice to parents regarding proposed change of an educational placement was required, and opportunities for parents or guardians to obtain an impartial due process hearing had to be described.

The major changes that had to be made in many states in order to come into compliance with P.L. 93-380 can be appreciated when the requirements of the act are seen in juxtaposition with the results of a survey reported by Rodriguez and Lombardi (1973). They reported that 37 of the 39 states responding to their survey did not have to secure parental permission in order to legally place pupils in special classes. Six other states, including Florida, required parental permission, but could, under certain circumstances, place a child without parental permission.

P.L. 94-142, the Education for All Handicapped Children Act, was signed into law in November 1975. It expanded on the due process

safeguards that had been contained in P.L. 93-380, and the implementing regulations detailed procedural safeguards even further. In the publication of the Federal Register on August 23, 1977, the comments included in the rules and regulations of P.L. 94-142 specifically disqualified school board officials as eligible impartial hearing officers in due process proceedings.

P.L. 94-142 is voluntary in the sense that a state must submit an annual program plan and make the assurances contained in the law and implementing regulations only if that state wants to participate in the funding available through the appropriations of the Act. However, Section 504 of the Vocational Rehabilitation Act of 1973 (P.L. 93-112) prohibits discrimination by reason of handicap in any program or activity receiving federal financial assistance of any type. The implementing regulations for Section 504 were not promulgated until 1977, and those regulations cite compliance with P.L. 94-142 as a means of meeting the necessary procedural safeguards in educational programs.

Florida Litigation and Legislation Related to Due Process

There was no statewide system for providing educational programs for exceptional students until passage of the Minimum Foundation Program in Florida in 1947. Section 236.61 established the definitions and requirements for participation in special education programs. The

regulations relating to this statute were published in December 1948. There was no requirement for parental notification or participation in the decision-making process, and one regulation made case records part of the permanent file of the student and available for examination only "by an authorized school administrator."

Turnbull (1975) observed that much of the activity in state legislatures regarding educational opportunities and due process for exceptional children seemed "to be in response to litigation that had been brought against the state or a school district within the state" (P. 6). Two suits were filed in Florida in 1973. One, the Florida Association for Retarded Children et al. v. State Board of Education (Note 18) was filed in the federal Southern District Court and involved the right to education for handicapped students in Florida. The second case, Wilcox v. Carter (Note 19) was filed in the United States Middle District Court by the parents of a mentally retarded child in Duval County, requesting the court to establish orders setting forth requirements for the School Board of Duval County to follow in the identification, classification, and education of exceptional children. Both courts abstained from the suits after the 1973 legislature amended Statute 230.23 (4)(m) to include provisions for parental notification of exceptional student placement, and for informing the parent or guardian that a review of the placement was available upon request.

The Florida Board of Education Regulation 6A-6.331 (6) was promulgated in June, 1974, to implement the amended statutory

provision. Specific details of the review conference, including the right of the parent or guardian to question school personnel regarding the proposed placement, a decision in writing following the review, and a final review by the school board of any decision contrary to the wishes of the parent or guardian, was incorporated into the language of the regulation.

This remained as practice until the Florida 1978 legislature again amended Statute 230.23 (4)(m) for the specific intent of bringing the state into compliance with the more stringent due process requirements of P.L. 94-142 (Cullar, Note 8). The major change which occurred in 1978, dealt with the shift from the school board as the final review board and authority to the vestment of authority in an impartial hearing officer, who was excluded from being an officer or employee of the school board. The amended statute also broadened the right of the parent to notice and an impartial hearing on the "identification, evaluation, placement, or lack thereof" [Florida Statute 230.23 (4)(m)].

The 1978 amended statute contained direction for the conduction of the due process hearings, giving the state board authority to establish rules governing these hearings, and exempting these hearings from the requirements of the state's comprehensive administrative procedures act. However, the statute specified that a parent had the right to request that the hearing officer be from the Division of Administrative Hearings (DOAH). This was significant in that all the hearing officers employed by DOAH are attorneys.

Rules for the 1978 statute were passed by the Florida Cabinet, sitting as the State Board of Education, on August 8, 1978. Subsection (6) of Rule 6A-6.331 was substantially rewritten to include specifications regarding the due process hearing rules of procedure which were to be developed by each school board, with provision for a "full explanation of all the procedural safeguards available to the parents." These hearings could be initiated by a parent or the school district on the initiation or refusal to initiate the identification, evaluation, or educational placement of an exceptional child, or the provision of a free appropriate public education to the child.

State Board of Education (SBE) Rule 6A-6.331 provides for hearing officers to be used from other than DOAH if approved by the division of public schools, unless the parent requests that the hearing officer be from DOAH. Since the services of the DOAH attorneys are available without any direct expense to the school districts, the prevailing practice has been to use DOAH rather than a hearing officer for whom the district would have to bear the expense (Wells, Note 5).

Issues Dealing with Impartial Hearing Procedures

There are a number of issues resulting from implementation of impartial due process hearings for exceptional students. These issues include the dynamics and evaluation of the process itself, burden of

proof and decisions, selection of hearing officers, training of hearing officers, compensation and other costs of hearings, and mediation or conciliation conferences prior to formal hearing.

Dynamics and Evaluation of the Hearing Process

The initial hopes of the advocates in PARC that the due process hearings would make the schools justify individual placements and be accountable for the educational program offered the child were not completely realized. The Project on Student Classification, based at the University of Pennsylvania, and the Project on the Classification of Exceptional Children, Vanderbilt University, did follow-up analyses of the implementation of PARC. Kuriloff et al. (1974) reported that the Project on Student Classification found that a lack of clear criteria made inconsistency a problem for the hearing officers, leading to what was described as "individualized justice." An appeal process to the Secretary of Education was helpful in formulating guidelines in both procedural aspects of the hearings and in decisions that could be used as precedent.

Kirp et al. (1975) reviewed problems and accomplishments in the due process hearings which occurred in the time period immediately following PARC and Mills. In Pennsylvania, 11 months after the ratification of the PARC settlement, 255 hearings had been requested. Forty-seven had been held, with decisions reached in 43. Thirteen decisions were favorable to the school's position out of the 25 hearings that were open. Hearing officers were mutually agreed upon by PARC and the district.

Kirp et al. (1975) also reported the same problem with inconsistency of decision-making standards by the hearing officers which was noted by Kuriloff et al. (1974). One contributing factor for this was the confidentiality of the closed hearings (230 of the first 255 were closed), making it impossible for the parties in the hearings, including the hearing officers, to access the written transcripts or the decisions. Also, the broad and elastic standard of "appropriate education" left programming decisions open to interpretation. The introduction of an informal pre-hearing session with Pennsylvania state department of education personnel to resolve technical disputes (i.e., transportation), and the mechanism for appealing the hearing decisions were introduced as a way of solving some of the problems encountered in Pennsylvania's first year of experience with the hearings (Kirp et al., 1975; Kuriloff et al., 1974).

The Mills decree placed the burden of proof for justification of the recommended placement on the school in the hearings, and limited the hearing officers' decisions to the evidence introduced at the hearings. The Vanderbilt University team found that most of the hearings were lacking in procedural regularity and were conducted more like conferences than hearings (Kirp et al., 1974). The District of Columbia's personnel department employed the hearing officers, most of whom were university psychologists and special educators serving on a part-time basis. During the first six months of implementation following Mills, 11 decisions had been rendered, with the school's recommended placement ordered in seven of the 11 (Kirp et al., 1975).

A system for evaluating hearing officers is seen as necessary. Abeson et al. (1975) recommended that an already standing state board, preferably one independent of the state education agency, be utilized for this purpose. Bersoff (1978) suggested that the best method for evaluating the neutrality of the hearing officer would be to establish a monitoring system that would record the number of appeals which asserted that the hearing officer was partial or biased (p. 107).

Lay (1977) did an indepth study of decisions rendered in the first year of implementation of Massachusetts' impartial hearing process under state statute Chapter 766 (very similar to the procedural requirements in P.L. 94-142). A review of results in Lay's study indicated that the decisions of hearing officers were idiosyncratic because the hearing officers had no opportunity to systematize decision-making with other hearing officers. She recommended that state education agency personnel provide for internal review of decisions to attempt to identify individual patterns of ruling which might be based on personal values or biases. Lay also recommended that decisions from the hearings be made available to the public for review. (The Division of Special Education Appeals initiated publication of the decisions in Massachusetts in their publication Appeals News, Note 9, Note 20).

Burden of Proof and Decisions

In a survey of state statutory provisions conducted in 1976, Kotin and Eager (1977) reported that approximately half the states

define the responsibility for "burden of proof" in due process hearings. The typical burden of proof provision, according to Kotin and Eager, placed responsibility for the burden of proof on the school district to demonstrate that the evaluation results or the placement recommendation are "appropriate" (p. 18).

Moore (1978) quoted Reed Martin in response to a question about burden of proof:

> A general test used to determine who has the burden is to ask which party would fail if no evidence at all were offered on the issue. Whomever asserts an issue (e.g., my child needs occupational therapy) would apparently have the burden. After establishing a prima facie case, the burden might shift to the school to prove that what it is doing is appropriate. (pp. 10-11)

Appeals News (Note 20) included a discussion of burden of proof, and stated that hearing officers are to take the position that both parties have an equal burden of proof responsibility. The most ambiguous area in determination of burden of proof is the adequate versus appropriate provision of the educational program for the child, particularly in regard to the question of responsibility of the local education agency for payment of private school tuition (Lay, 1977; Appeals News, Note 20).

According to records maintained in the Division of Special Education Appeals in Massachusetts (Appeals News, Note 9), an analysis of 60 decisions rendered between September 1974, through July 1977, showed that 78 percent of the issues in the hearings involved private versus public school placement, with the parents in all cases desiring private school tuition to be paid by the school

district. The decisions of the hearing officers were in favor of the parents in 50 percent of the cases reviewed; in favor of the school in 30 percent; of the school with modification in 11 percent; and alternative decisions in nine percent of the cases.

A later edition of Appeals News (Note 20) continued the analysis of the hearing officers' decisions. In 74 decisions rendered between June and December 1977, the same trend was seen, with 76 percent of the disputes involving public versus private school placement.

Haggerty and Sacks (1977) conclude:

> Because the handicapped child requires specialized instruction in order to operate effectively in his environment and is far more dependent upon the schools to develop his capabilities than nonhandicapped children, education which does not correctly fit the student's capacities and which does not aim at the maximum academic, personal, and social adaptive skills may in reality be inappropriate. (p. 994)

Selection of Hearing Officers

An early difference of opinion which surfaced in the literature was over the issue of whether the hearing officer should be an attorney, for the sake of procedural regulation, or a program person, for the sake of special knowledge about content. P.L. 94-142 does not specify who can serve as a hearing officer, but the regulations do specify who cannot--anyone employed by the agency responsible for the education of the child, or anyone with a personal or professional interest which would interfere with objectivity.

Abeson, Bolick, and Hass (1975) specified criteria for selection of effective hearing officers. Individuals serving in this capacity should:

> possess special knowledge, acquired through training and/or experience, about the nature and needs of exceptional children. An awareness and understanding of the types and quality of programs that are available at any time for exceptional children is essential . . . . Have sufficient strength to effectively structure and operate hearings in conformity with standard requirements and limits and to encourage the participation of the principal parties and their representatives. (p. 32)

Douglass (Note 7) surveyed organizations about their preference in selection of hearing officers. Personnel in the Massachusetts Department of Education discussed the importance of correct rulings on legal points that might not directly pertain to the special education aspects of the hearing, since incorrect procedural rulings might give cause for an extended and costly future procedure. The Massachusetts personnel also felt that there was a possibility of persons with a special education background making judgments based on their own point of view on program issues.

The Florida Association for Retarded Citizens Executive Director, Linden Thorn, told Douglass that he felt that exceptional education program personnel should be utilized for hearing officers, after a training program conducted by lawyers. Barbara Smith, Consultant in Governmental Regulations for the Council for Exceptional Children, concurred with Thorn that program people trained in legal procedures were preferable to attorneys. She felt the use of attorneys as hearing officers resulted in more adversarial hearings, which is not advantageous to parent-school relations.

The California coordinator for program development in the California State Department of Education is quoted by Wells (Note 21)

as saying that their experience has supported the use of program people rather than attorneys. It was also unique in the survey of states conducted by Wells that California is the only state using a panel of three hearing officers: one selected by the parents, one selected by the local education agency, and a third selected by the first two members.

On the neutrality issue in the selection of hearing officers, Abeson et al. (1975) asserted:

> as a rule of thumb, the greater the administrative agency distance between the selection, training, and assignment of hearing officers and the actual implementation of resulting decisions, the greater the likelihood of preserving neutrality. (p. 32)

Training of Hearing Officers

Training of hearing officers varies widely among the states. In Wells' (Note 21) survey of seven state practices, the following training practices were reported: Ohio has developed a training package; Illinois has a two and one-half day training period, conducted by a member of the special education state staff; Massachusetts has a preservice as well as an inservice program for hearing officers, with the Division of Special Education Appeals having responsibility for the training. Video-tape scenarios, role playing, and analysis of evidence is included in the Massachusetts training program.

A Handbook for Hearing Officers has been published in South Carolina, which includes a section on laws and litigation and the

role and responsibilities of a hearing officer (Ginn & Hickman, 1977). The National Association of State Directors of Special Education (1978) designed a manual, A Step-by-Step Resource Manual for Hearing Officers, to be used by persons functioning as hearing officers and by state and local education agency officials in developing training for hearing officers.

Florida, in relying on hearing officers from the Division of Administrative Hearings, has not instituted any formal training program. State Board Rule 6A-6.331 gives the districts the latitude of using as hearing officers those who have "successfully completed a training program conducted or approved by the Division of Public Schools," unless the parent specifically requests the hearing officer be from DOAH.

In summary, Bersoff (1978) listed crucial features of training of hearing officers:

> 1. Didactic education concerning the tenets of the Constitution and the common law . . .
> 2. Didactic education concerning the definition and implementation of due process generally.
> 3. Extended summary of all the laws impinging on the rights of handicapped children, their parents, and the school . . .
> 4. Role playing the conduct of a hearing . . .
> 5. Practice in the writing of final decisions which include both findings of fact and conclusions of law. (pp. 197-198)

Compensation and Other Costs of Hearings

The Special Education Administrative Policies Manual (1977) raised the problem of neutrality in hiring and compensation of hearing officers by a state or local education agency, and concluded

that there is no obvious solution to the problem. Abeson et al. (1975) recommended that hearing officers be employed only on a part-time basis, so that they would not be dependent on the income entirely and therefore would be more neutral in reaching their decisions.

States have approached the reimbursement of hearing officers in various ways. In 1973, Pennsylvania officials estimated the costs of the initial PARC hearings at $500 per case, with the state paying for the hearing officer (Kirp et al., 1975). Bersoff (1978) wrote that the minimum fee for each day's service by a hearing officer was $100. Massachusetts established a Division of Special Education Appeals at the state level, with four full-time hearing officers and four consultant hearing officers paid by the state (Appeals News, Note 9).

In Wells' survey (Note 21), New Jersey reported the employment of three impartial hearing officers who are based with the Bureau of Education for Exceptional Students in the state education agency. New York, according to Wells, paid the salary of the hearing officer but the local district paid the travel and per diem cost.

The cost of hearings to the school district is not limited to the expense of the hearing officer, however. Kervick and Schultz (1978) reported that an analysis of hearings in Massachusetts indicated that attorneys' fees for the school system averaged $800 to $1000 per hearing. Other costs to the school district include costs of substitutes, staff time, and preparation of written material.

Moore (1978) quoted F. P. Goss of the Ohio Division of Special Education regarding the costs of hearings:

> The cost of some hearings may exceed the cost of either going directly to court, or of providing the child everything that the plaintiffs wish. Costs range so far between $4,000 and $15,000 for direct and indirect costs. (p. 27)

Mediation or Conciliation Conferences Prior to Formal Hearing

Most authors urge the use of mediation prior to a formal impartial due process hearing (Budoff, 1978; Kotin, 1978; Kotin & Eager, 1977; Moore, 1978; Appeals News, Note 9, Note 21). P.L. 94-142 regulations encouraged the use of mediation techniques prior to a due process hearing, but cautioned that the informal process should never be used to "deny or delay a parent's right to an impartial hearing" (Section 506).

Moore (1978) reviewed information furnished by Connecticut and Minnesota relative to their experience with mediation conferences. Connecticut reported that out of 47 mediation sessions conducted between 1975 and 1977, only five went on to a formal hearing. The report from Connecticut indicated that mediation is less stressful and less time-consuming, as well as less costly than a full impartial hearing. Minnesota was reported by Moore as encouraging parents and district officials to use a conciliation conference as an optional process to try to resolve differences through understanding and compromise.

Mediation has been formally integrated into the Massachusetts system, with mediation representatives employed by the Bureau of

Special Education Appeals in nine regional offices in the state since April 1976 (Appeals News, Note 9). The Bureau of Special Education Appeals estimated that a mediator can handle roughly twice the caseload of a hearing officer, thereby being financially advantageous as well as less emotionally draining to all parties. Further, "parties who have reached agreement through mediation have generally worked better and more often together on behalf of the child" (p. 5).

The less formal, less adversarial, and less pressured mediation procedure is also recommended by Kotin and Eager (1977). The poor and minority parent is more likely to participate in the mediation conference than in the more legalistic due process hearing, according to Kotin and Eager. This becomes particularly important in consideration of data collected by Lay (1977) which indicated in the due process appeals included in her study in Massachusetts that "the parents were white, middle to upper-middle class, well educated and professional" (p. 151).

Mitchell (1976) reported that intensive interviews with 25 parents who had been through an impartial hearing indicated that all parents but one "would much rather have negotiated with the school than go to a hearing" (p. 13).

Budoff (1978) concluded that evidence indicates that an attorney may be the best selection for a hearing officer, but that a "social worker-psychologist-educator" is likely to be a more effective mediator. Mitchell (1976) quoted parents as stating

a need for an outside negotiator early in the process if adversarialness is going to be avoided.

The Literature in Retrospect

The right of handicapped children to an appropriate, free education has moved closer to reality in the United States in the 1970s through judicial and legislative action. The due process hearing system is one way that such rights become reality. Good information and communication are vital to the proper functioning of the due process system, but so are resources to make meaningful use of the safeguards.

The literature appears to support the assumption that access to an appropriate educational opportunity requires the checks and balances of a review process, established in written procedures, and informed professional as well as parental involvement. It is also seen in the review of the literature that the due process procedure is relatively new in special education, and that it is being established with different emphases in the states.

CHAPTER III

PROCEDURES

Overview of the Design

This investigation was conducted to collect and analyze data related to the nature and impact of the impartial due process hearings for exceptional students in Florida school districts. It was designed as a descriptive study, with data collected from a variety of sources. These sources included the findings of fact and orders of the hearing officers from the cases in the study, interviews with the exceptional student education directors of the school districts involved in the hearings, and compilation of attorney fees and transcription costs of the hearings. The hearings in the investigation were all cases which had been held with a decision rendered during the first year of implementation of the formal hearings in due process procedure for exceptional students in Florida (August 8, 1978 - August 31, 1979). Data include an abstract of each hearing, relevant demographic data of the school districts, and a summary of interviews with the district directors of exceptional student education.

Identification of Hearings

The Bureau of Education for Exceptional Students was asked to provide the investigator with a list of all Florida school

districts in which an impartial due process hearing had been requested since the promulgation of the State Board of Education Rule 6A-6.331 (6) on August 8, 1978, which established the procedures to be followed in exceptional student due process hearings. This also provided the investigator with the dates of the hearings which were held prior to August 31, 1979, and the dates of orders which had been issued by the hearing officers. From this list, 16 hearings met the criteria of having been requested, held, and order issued from August 8, 1978 through August 31, 1979. Since more than one hearing had been held in some districts, 11 school districts were represented in the population of this study. The 16 hearings were numbered in chronological order, except for hearings which had occurred in the same district which were numbered consecutively for ease of reference by the investigator. Numbering of the cases and the districts for the purpose of this study was chosen rather than using actual names, both for legal issues of confidentiality and the professional concern for avoiding disclosure of unnecessary details regarding exceptional students which might lead to informal identification of those students, even though no actual names were used.

Data Collection

The findings of fact and the orders of the hearing officers were obtained from the Bureau of Exceptional Students, Florida

Department of Education. The district directors of exceptional student education from the 11 school districts were interviewed by the author following an interview guide (see Appendix A). The district directors were also asked to provide documentation of the direct costs of the hearings, i.e., attorney fees for the school district and the cost of transcription of the hearing. The directors also identified the sources of funds used to pay these direct costs.

Review of the Hearing Documents

Abstracts of each of the findings of fact and orders of the hearing officers were prepared (Appendix B). The abstracts contain the following information:

1. Exceptionality of the child;
2. Issue in dispute;
3. Initiator of the hearing;
4. Timeline from initiation of the request of the hearing to the hearing and to date of the order;
5. Summary of evidence presented during the hearing;
6. Decision;
7. Subsequent appeal or judicial action, if any.

Interview with the Director, Exceptional Student Education

An interview was held with the director of exceptional student education of the district in which a hearing in this study was held. The interview form provided in Appendix A was used to structure the interview and assist in data analysis. Each interview was done by the author.

Data Analysis

The analysis of the data collected was for the purpose of determining salient features and to identify any trends that might be observed from an examination of the hearing process and its results. A compilation of factual information from the abstracts of the hearing was used to answer the following questions:

1. What have been the issues in the hearings?
2. What have been the decisions in the hearings?
3. To what extent have the decisions of the hearing officer been appealed?

Demographic data related to district size and quantity of exceptional student education programs available during the 1978-79 school year were used in the analysis of information from the abstracts and the interview responses. For the purpose of categorization of districts by size, the following standard was applied based on K-12 pupil enrollment for 1978-79:

Small - 0-14,999 students

Medium - 15,000-49,999;

Large - 50,000 and over.

Information about the range of exceptional student education programs was also collected in order to determine if the comprehensiveness of the exceptional student program in the district was related to the phenomenon of a due process hearing. There are 12 categories of exceptional student education programs which are available under Florida's system of special education in the public schools.

The responses to the interviews with the district directors are summarized in the narrative in Chapter IV. Specifically, the data analysis was organized to formulate answers to the following questions:

1. To what extent have mediation efforts been made in cases which have gone to hearings, and what do the most important ingredients of effective mediation appear to be in the perception of the district directors?

2. From the perception of district directors of exceptional student education, to what extent have the use of attorneys as hearing officers been satisfactory?

3. What have been the direct and indirect costs of the hearings to the school districts, and what source of funds has been used to pay for the direct costs?

4. To what extent have administrative procedures been changed in the school districts due to the experience of participation in a formal due process hearing?

Direct costs of the hearing were calculated on a per case, per district basis. The range, from low to high, and the median direct cost were computed in the data analysis. Indirect costs were estimated from the district directors' perception of the total time that they had spent in preparation for and participation in each due process hearing. Again, the range, from low to high, and the median amount of time, expressed in days, was computed. To relate the time of the district directors to the indirect cost incurred by the districts in the hearings, a small, medium, and

large district in the population of the study were contacted and asked for the annual salary base for the position of exceptional student education director. This salary information was used with the median number of days spent by the directors to show estimated cost of the time of the district director in a due process hearing.

The procedures described in this chapter were used to identify significant features contained in a state's first year of experience with the impartial due process hearing procedures for exceptional students. The data analysis was designed to synthesize the information in a format which would be helpful to practitioners in the field of special education administration.

CHAPTER IV

RESULTS

This chapter presents the results of the analysis of the hearing documents of the 16 impartial due process hearings for exceptional students which were selected as the population for the study, and the responses to the interviews which were conducted by the author with the directors of exceptional student education in the 11 Florida school districts in which these hearings occurred. The guide which was used to structure the interviews with the district directors is contained in Appendix A, with tabulated responses shown where appropriate. The abstracts of the 16 hearings comprise Appendix B. Appendix C is a summary chart of characteristics of the hearings.

Characteristics of the Hearings

To identify the population for the study, the author asked the Bureau of Education for Exceptional Students in the Florida Department of Education for a listing of all exceptional student due process hearings which had been held and had had decisions rendered from August 8, 1978--August 31, 1979. Sixteen hearings met the criteria, and all were included as the population for the study.

The 16 hearings had occurred in 11 school districts throughout the state. Eight districts had had one hearing each, while two districts had had two, and one district had four which were included in the study. Geographically, these districts represented the entire state, from the Panhandle to south Florida.

All of the hearings were conducted under the auspices of the Florida Department of Administration, Division of Administrative Hearings (DOAH). DOAH hearing officers are attorneys, and are full-time employees of the state. All of the hearings except one were heard by the same hearing officer.

Demographic Data

The 67 school districts in Florida were assigned to size categories according to the criteria described in Chapter III, giving 44 small sized districts, 14 medium sized districts, and 8 large sized districts. When the 11 districts in which hearings were held were examined, three were small, four were medium, and four were large sized districts. Expressed in percentage, the districts in the study represented 6.8% of the small sized districts in Florida, 26.6% of the medium sized districts, and 50% of the large sized districts.

The school districts having hearings in the study were assigned to categories based on the number of exceptional student education programs available in the district during the school year in which the hearings occurred. There are a maximum of 12 special education programs available to districts in the Florida Education Finance Program. The districts in the study were examined according to the

number of programs available, and it was found that nine of the 11 districts had all 12 programs available either by the district or provided through the district's multi-county cooperative agreement with a nearby county. Four of the 11 districts provided for the low prevalence exceptionalities of vision, deaf, and physically handicapped through multi-district cooperative programs. The five categories of exceptionalities which were represented in the hearings were all offered within the district boundaries.

The district directors of exceptional student education in the 11 districts in which the hearings occurred all held certification in at least one area of special education. They also, with the exception of five district directors, held state certification in the areas of administration and/or supervision. Four of the 11 held doctorate degrees.

Salient Features of the Hearings

In this section of the report, data are presented to report the exceptionalities of the children involved in the hearings, the issues in dispute, legal representation of the parents and the school districts, and decisions in the hearings. Abstracts of the hearing documents are contained in Appendix B and certain characteristics are presented in summary form in the chart found in Appendix C.

Exceptionalities. The exceptionalities represented in the 16 hearings included emotionally handicapped, specific learning disabilities, educable mentally retarded, trainable mentally retarded, and speech and language impaired. Their distribution was as follows:

(1) Eight hearings involved emotionally handicapped students. Two of these hearings involved dually classified students, with one being classified as emotionally handicapped and educable mentally retarded, and another classified as emotionally handicapped and specific learning disabled.

(2) The specific learning disabilities category was found in three of the hearings, not including the dual classification listed in (1).

(3) Educable mentally retarded children were the subjects of two hearings, not including the dually classified child listed in (1).

(4) Speech and language impaired students were represented in two hearings.

(5) A trainable mentally retarded child was the subject of one hearing.

Ages. The students in the hearings were divided into chronological age groups and assigned to categories representative of elementary and secondary school populations. Elementary school ages were designated as 5-12, and secondary school ages were classified as 13-18. Nine of the students were in the elementary school age range, and seven were in the secondary level age range.

Issues. The most frequent issues in dispute were parental requests for private school tuition to be paid by the districts, and parental disagreement with classifications of children by the districts. Requests for the districts to pay private school tuition occurred in two cases of specific learning disabled children, one

specific learning disabled/emotionally handicapped child, two emotionally handicapped children, and one educable mentally retarded child. These hearings were evenly distributed among school districts according to size.

Parental disagreement with classifications of children by the districts resulted in five hearings. Two of these involved children classified as emotionally handicapped, one emotionally handicapped/educable mentally retarded, one specific learning disabled, and one trainable mentally retarded. Again, these disputes were evenly distributed among small, medium, and large sized districts. Issues which appeared in only one hearing included a specific class within the same program, a change in location of a program without parental involvement at staffing, geographic location of a program within a district, occupational therapy services for an emotionally handicapped child, and appropriateness of a district's evaluation.

Legal Representation. All school districts were represented by counsel at the hearings included in the study. In nine of the 11 districts, this legal counsel was the school district attorney who also represented the district in other matters. In two districts, the school boards utilized the services of contracted attorneys, who were employed for the specific purpose of representing the school district for that hearing. One small sized district and one medium sized district used this method, each of which had only one hearing. Therefore, in 14 of the 16 hearings, the legal representative for the school district was the school board attorney.

In ten hearings, the parent was represented by an attorney. Two of the legal representatives for the parents were provided through free or low-cost legal aid services. A third legal aid attorney had been involved up to the point of a hearing, but at the time of the hearing, the attorney asked to be excused. Therefore, the representative in that case documents representation by the parent.

Decisions. Decisions of the hearing officer(s) can be categorized in the following manner:

(1) In 11 cases, the decisions upheld the position taken by the district.

(2) Three decisions found in favor of the position taken by the parent. However, one of these decisions was appealed to the Commissioner of Education and the order of the hearing officer was reversed, so ultimately only two of these decisions were implemented for the position of the parent.

(3) One hearing was decided in favor of the district by default, due to the parent not appearing at the scheduled time of the hearing.

(4) One hearing concluded in a negotiated settlement which was entered by the two attorneys in the case, and which was accepted as the order of the hearing officer.

In all four hearings which were initiated by the districts, the decisions upheld the position taken by the districts. In the 12 cases which were initiated by the parents, three decisions found in

favor of the parent, one case involved the parent's request for residential placement of an emotionally handicapped child at district expense, and another case supported the parent's request for the provision of occupational therapy services for an emotionally handicapped student. The hearing order which was reversed by the Commissioner of Education would have mandated the district to provide a program for an educable mentally retarded student at a location closer geographically to the student's home.

When using size of the district as a descriptor in examining the hearings in which the decision of the hearing officer upheld the position taken by the parent, one large district and two medium sized districts were found. Legal representation was present for the parent in two of the cases, but in the third the parent presented the case.

Subsequent Appeal or Judicial Action. Two hearing decisions were appealed to the Commissioner of Education. In one case, the Commissioner reversed the hearing officer's order which had found in favor of the position of the parent in the issue of geographic location of an educable mentally retarded program in the district. In the other case, the Commissioner upheld the order of the hearing officer, which had found in favor of the position taken by the parent in asking for residential placement of an emotionally handicapped student at district expense.

There has been a judicial appeal filed in one of the cases. This case represents a speech and language impaired student in

which the decision of the hearing officer upheld the position taken by the school district. The appeal was filed within the timeline established in the criteria for the study; however, no judicial action had been taken.

Timeline of hearing dates. A review of the timelines included in the abstracts of the hearings indicate a timeline longer than the 45 days specified in both P.L. 94-142 regulations and Florida state board rules. The greatest lapse of time between request for a hearing and the date of the order was 264 days; the shortest period of time between the request and the date of order was 28 days. The 45 day time sequence was met in only one of the 16 cases. Table 1 summarizes the data regarding timelines by showing the mean and the standard deviation for the time between the request and hearing date, between hearing date and date of order, and between the request and the date of order for the 16 hearings.

Table 1

Summary of Due Process Hearing Timelines

	Time Between Request Date and Hearing Date	Time Between Hearing Date and Order	Total Time Between Request and Order
$\bar{X}$	67.37	73.25	140.62
SD	54.123	30.14	62.69

Interviews with District Directors

This section of the results of the study focuses on the information provided by the 11 district directors of exceptional student education in the districts in which the hearings in the study occurred. The interviews were conducted by the author, and Appendix A contains an interview guide with responses shown where appropriate.

Direct Cost of the Hearings

The attorney fees for the representation of the school district comprised the largest direct cost of the hearings for the districts. In three large districts, it was not possible to obtain the exact cost of the attorney for the district, since full-time legal counsel within the school district's staff structure participated in the hearings and did not provide any kind of direct cost data to the district director. However, it is possible to estimate the cost by computing an average of the number of days expended by the staff attorneys in relation to one of the attorney's actual salaries. Using this method, an average of three days of full-time work was spent on the due process hearings in the large districts, and the salary of a large district's staff attorney was $42,500 in the year in which the hearing occurred. This annual salary divided by 220 working days results in a daily rate of $193. Therefore, an approximate legal cost to the district using a staff attorney for one hearing was $579. This approach to estimating the cost is low if fringe benefits and other staff time in the attorney's department were taken into account.

In the six districts which used the school board attorney who also handles other legal work for the board, it was possible to obtain copies of bills provided to the district for the legal representation of the district in the hearing. The range of ten hearings in six districts was a low of $284 for a case in a small district to a high of $2,584 in a medium district. The mean was $1,093 and the median $727.

In two districts, the school board contracted with counsel who were not the board's attorney for the purpose of representing the district in the due process hearing. One small district used this method, and the attorney's fee was $900. One medium district paid $2090 for the contracted attorney in its hearing. The mean was $1,495 when a contracted attorney was used for the hearing.

The cost of providing a "verbatim transcript of the hearing" is the responsibility of the superintendent or designee in the district in which the hearing occurs under Florida rules. P.L. 94-142 regulations state that a written or electronic verbatim record of the hearing must be made. In 14 of the 16 hearings, a court reporter was used and a transcript was prepared in 13 cases. The cost of the court reporter and transcript preparation ranged from a low of $150 in a small district to a high of $1,016 in a medium sized district. The median cost computed on the 13 cases was $500; the mean was $548. In one large district, where the hearing had been initiated by the district and the parent did not ask for a copy of the transcript, only the court reported attendance fee of $80 was charged to the district. In another case in a small district, a

secretary from the superintendent's staff was used to keep the record so no direct cost was incurred by the district.

The source of funds used to pay these direct costs were general school district operating funds except in two medium sized districts where P.L. 94-142 project funds were used. Those two districts had only one hearing each in the study, so the direct costs of 14 of the 16 hearings were assumed by the school district.

A direct cost that resulted in two of the districts in the study were in the two hearings in which the hearing officer's order directed the district to provide a placement or a service that the district would not have otherwise provided. In one large district, this cost was estimated to be in the area of $16,000 to $20,000 annually for residential placement of an emotionally handicapped student. In the other case, a medium sized district was ordered to provide occupational therapy services to a student in the emotionally handicapped program. The district director estimated that this would cost the district approximately $30.00 per hour for contracted services. Based on serving the child for two hours per week, the cost per school year would be approximately $2,160. The amount of revenue that would be generated from the state funding system for provision of these services would have to be deducted from the estimated expenditure to arrive at a true district expense figure, however.

Indirect Costs of the Hearings

The issue of indirect costs of the hearings was addressed by requesting the 11 district directors to estimate the amount of

time that they, their staff, and school personnel expended in preparation for and participation in the due process hearings. Their responses indicated that personnel filling a variety of roles in the district staff were involved in the hearings. School psychologists, area directors, social workers, visiting teachers, coordinators and supervisors of exceptional student education areas, and placement and staffing specialists were mentioned by the directors. School staff named in the responses of the directors as having spent time in preparation for and participation in the due process hearings included principals, classroom teachers, and speech therapists.

The only position in which an attempt was made in this study to relate indirect costs to an estimated monetary amount was in the utilization of the time of the district director of exceptional student education. First, the mean amount of time spent by the directors in the case(s) was computed, from the interview responses with the district directors. The result was an average time expenditure of four days. The range reported was from a low of one day to a high of seven days.

The base annual salary for the position of exceptional student education director was secured from the salary schedule for 1978-79 from a small, medium, and large sized district which were included in the study. This annual salary was divided by 220 days to determine a daily rate, which was then multiplied by the average number of days (four) which had been derived from the director's estimates. The small district's salary base was $16,000. Therefore, the daily rate was $72, and the cost to the district for

the amount of time that the director used in the hearing process would be estimated at $288.

The medium district's salary base was $22,100, which computed to a daily rate of $100, and to a time cost for the director of $400. In the large district with the base salary of $27,664, the estimated indirect cost to the district would be $500 for the director's time in a hearing.

Another area investigated through the interviews with the district directors and related to indirect costs of the hearings to the districts was concerned with administrative changes as related to the experience of a hearing. Five of the 11 directors answered affirmatively, with three of the large districts citing the designation of a specific staff member in the exceptional student education department to assist in the hearing process. One large district administrator also noted the development of district-wide forms for use in documenting material that might be needed for hearings, as well as development of a training manual for principals and area supervisors on how to prepare for a due process hearing.

Attorneys as Hearing Officers

Responses of the directors to the use of an attorney as hearing officer was related to the desirability and necessity of having an attorney as hearing officer. Seven directors answered that it was a desirable practice; four answered negatively. In response to the question of necessity of the hearing officer being an attorney, nine

directors responded affirmatively, and two answered "no". One of the "no" responses was qualified, however, by the director who indicated that his response was predicated on the assumption that training would be completed. Several directors commented that their "yes" responses to "necessary" was due to the fact that both school districts and parents were represented by legal counsel, and that an attorney acting as hearing officer was necessary because of the attorney expectations. One director responded that it gave the proceedings the necessary status to satisfy parents that their rights were being protected.

Advocacy Groups

Since the involvement of advocacy groups was instrumental in the passage of P.L. 94-142 and the concommitant emphasis on parent rights, the directors were asked if there had been an advocacy group active in the hearing(s) in their district. In only one district was an organized advocacy group active in the case; in two other districts, informal parent advocacy groups were active. The organized advocacy group was involved in the case in a medium sized district. Of the two informal groups, one was in a small district and the other was in a large district.

Mediation Prior to Hearings

The district directors cited informal mediation attempts prior to the formal hearing in 15 of the 16 cases. In these 15 mediation efforts, a conference with the district directors was held in each

instance. Additional conferences with project supervisors, area superintendents, assistant superintendents, superintendents, and principals were mentioned by various district directors. Three directors stated that additional testing of the child had been done by the district as part of the mediation effort, while two others responded that testing had been offered but had been refused by the parent.

The directors were asked to state their opinion as to the most important ingredient of effective mediation. Their responses can be categorized into responses relating to the part of the district, the parent, or to both parent and district.

Examples of responses that focused on the part of the district in effective mediation include: "personal involvement of the exceptional student education teachers and director with the parents;" "knowing your case well so that you will know what type of mediation and how much to try;" "constant, continual contact with the parent;" and "offer of additional testing at district expense."

Responses that related to the role of the parent in effective mediation were: "parents knowing correct information about what P.L. 94-142 says and what it does not say;" and "sensible parents." "Good evaluative data and a genuine interest in resolution for the good of the child" and "genuine desire on part of both parties to reach resolution" were responses given by two of the administrators, and which include aspects of effective mediation efforts on the part of both the districts and the parents.

Results in Brief

The examination of the hearing documents from the 16 due process hearings resulted in information about issues in the hearings, exceptionalities represented, timeline of hearing dates, and decisions. The most frequent issues were parental requests for the districts to pay private school tuition, and parental disagreement with classification of the child as recommended by the district.

The exceptionality most frequently represented in the hearings was emotionally handicapped. The timeline of hearing dates was found to consistently extend beyond the 45 days cited in federal and state regulations as the maximum allowable from date of request of the hearing to the written decision of the hearing officer. In 11 of the 16 cases, the decision in the hearing upheld the position taken by the school district.

Interviews with the district directors of exceptional student education in the 11 districts in which the hearings occurred resulted in information about direct and indirect costs and mediation efforts. The greatest direct cost to the districts was for the legal counsel who represented the district in the hearing. Three different methods were used by the districts in securing this representation. Mediation was found to be extensively used, with the 11 directors estimating that 74 cases would have gone to a formal hearing in 1978-79 had mediation not been effective.

CHAPTER V

DISCUSSION

Chapter V is a discussion of the results of the study and conclusions. The discussion of the results is organized to answer the questions which were raised in the statement of the problem of the investigation. The conclusion section of the chapter is divided into educational implications of the results and considerations for further study. A comment paragraph concludes the investigation into the impact of the impartial due process hearing for exceptional students on Florida school districts in the first year's experience.

Discussion of the Results

Answers to the following questions were sought in this investigation:

1. What have been the issues in the hearings?
2. What have been the findings of fact and the hearing orders?
3. To what extent have the decisions rendered been appealed?

4. To what extent have mediation efforts been made in the cases that have gone to hearings, and what kind of mediation or conciliation conferences are generally done in the districts?

5. From the perception of the district directors of exceptional student education, to what extent has the use of attorneys as hearing officers been satisfactory?

6. What have been the direct and indirect costs of the hearings to the school districts, and what source of funds has been used for the direct costs?

7. To what extent have administrative procedures been changed in the school districts due to the experience of participation in a formal due process hearing?

Issues, Decisions, and Appeals

The two primary issues in the hearings have centered around parental requests for the districts to pay the cost of private school tuition for the child, and disagreement between the districts and the parents over classification of children in exceptionalities. A large number of hearings, six of 16 or 37.5% of the total number of hearings in the study, were related to the issue of the districts assuming the expense of tuition for a non-public school placement. All of these "tuition" hearings were initiated by the parent. Although this percentage was the highest of the issues in the study, it is low when compared to the experience of Massachusetts which reported 78% of the issues in their hearings involving public versus private school placement (Appeals News, Note 9).

In the second largest category of hearing issues, disagreement between the districts and the parents over classification of the child resulted in five hearings in the study. Three of these five hearings were initiated by the district. Issues which were represented by one hearing each were (a) a specific class within an emotionally handicapped program, (b) a change in location of a program after parental approval of the new educational plan, (c) geographic location of a program within a district, (d) occupational therapy services for an emotionally handicapped child, and (e) appropriateness of a district's evaluation.

The decisions in the hearings have generally supported the position of the districts. In the 14 cases in which the findings of fact and the hearing orders followed the usual format, i.e., when excluding the decision by default and the negotiated settlement, only three decisions supported the position taken by the parent. One of the three was later reversed by the Commissioner of Education on appeal. In all cases in which the hearing was initiated by the district, the order upheld the district, suggesting that the districts are initiating cases in which they have ample data. Also, in the five hearings which were held on the issue of the classification of a child as exceptional, all of the decisions supported the classification recommended by the district. Evaluative data on the students represented in these cases, then, can be viewed as adequate.

Two cases in the study were appealed to the Commissioner of Education, with the result of one reversal of the hearing officer's

order and one decision upheld. One decision was taken into the judicial system by the parent after the hearing order supported the position of the district. No court action had been taken on this case during the time frame of the study by the U.S. District Court in which it was filed.

Mediation and Hearing Officers

Mediation efforts were reported by the district directors of exceptional student education in 15 of the 16 cases in the study. The parent in the sixteenth case refused to meet with a representative from the school district staff, so mediation was attempted by the district in 16 of 16 cases. An index of the extent to which mediation is being used successfully in the districts may be inferred from the responses of the district directors to the question regarding the number of cases which might have gone to hearing if mediation had not resolved the dispute. The district directors estimated 74 cases had been successfully mediated during the 1978-79 school year.

The use of an attorney as hearing officer was generally viewed positively by the district directors. The perception of the directors to this item might have been biased by limited experience, since the same hearing officer from the Division of Administrative Hearings heard all but one of the cases in the study. There are now more hearing officers assigned to the exceptional student cases by Division of Administrative Hearings. The directors perceived the use of an attorney as more "necessary" than "desirable," and cited the need for procedural correctness and ability to stand scrutiny

of review by a high tribunal as reasons for having an attorney as hearing officer.

The timelines on the cases in the study indicate that the 45 day timeline from the date of the request to the date of a final decision in the hearings has not been met except in one instance. Significantly, this one instance occurred when a second hearing officer in Division of Administrative Hearings was assigned to the exceptional student cases. P.L. 94-142 regulations allow the hearing officer to grant specific time extensions of the 45 day time requirement at the request of either party. The Florida rule which established procedures for impartial due process hearings, however, does not address the issue of extensions. A statement is included in the findings of fact and hearing orders in all but two of the cases waiving the requirement of the entry of a final order within 45 days from receipt of the request for hearing by the school district.

Cost and Programming Changes

The direct costs for the districts in the hearings consisted of attorney fees for representation of the districts in the hearings and for the costs of making the required record of the hearing. It was found that three different methods of employing legal counsel were used by the districts in the study. One method was the use of attorneys who were already on the district staff in three large districts. When this method was used, the estimated legal cost for a hearing was $579.

When the school board attorney who also represented the district in other legal matters was utilized for the district's legal representative at the hearing, the mean cost was $1,093 and the median cost was $727. In the two hearings in which an attorney was contracted for the specific purpose of representing the district in only the due process hearing, the mean cost was $1,495.

It would appear that a cost effective principle is in operation in examination of the attorneys' fees in the hearings, i.e., the large districts in which full-time staff attorneys are employed estimated the lowest unit cost, and this may be a correct conclusion. However, caution is needed in interpreting these data due to the large amount of variance which is evident in a review of the cases. The complexity of the cases varied greatly, and the amount of preparation time and the actual length of the hearings make comparisons of both the direct and indirect costs tentative.

The indirect cost of the time of the exceptional student education director in the hearings in the study averaged approximately $400 when the average number of days estimated to have been spent in preparation for and participation in a due process hearing was multiplied by sample daily rates of directors' salaries. Other staff time included both district and school personnel in the hearings, but no attempt was made to assign a monetary figure to it. Psychologists, social workers, staffing and placement specialists, area supervisors, principals, and exceptional student

education teachers were personnel who were named by the district directors as having been involved in the due process hearings.

Programming costs as a direct cost as a result of implementation of a hearing order occurred in only two districts. In one case, provision of occupational therapy as a related service to a student in the emotionally handicapped program was estimated to cost approximately $2,160. Residential school placement for the other student was estimated to cost approximately $16,000-$20,000 annually.

Implications and Recommendations

Educational Implications

First, it is evident by a review of Florida's first year of experience with impartial due process hearings that the quasi-judicial era of influence in special education is impacting on the school systems. The emphasis on "paperwork," better described as documentation, is a necessity in the sphere in which the public schools are operating with exceptional children. This has implications for the teacher training institutions, both in the preparation of teachers and in the training of regular and special education administrators.

Teachers need to be given appropriate training in keeping accurate records and in developing quality individual educational plans, not only for the purpose of standing scrutiny in a hearing, but for improved educational opportunity that it provides

handicapped children. Administrators need to not only know accurate information about parent rights and programs, but they need to be exposed to mediation techniques and approaches. Special education administration training programs should include components of teacher supervision, legal knowledge relative to special education, and mediation skills.

Second, the state department of education should provide leadership in continued training for district personnel who are involved in due process hearings, for hearing officers from the Division of Administrative Hearings, and for parent and advocacy groups. District personnel should be given the opportunity to examine issues and trends in the continuing body of knowledge that is being defined as appropriate programming for special education children. This technical assistance to the districts has been initiated by the Bureau of Education for Exceptional Students, but it deserves the commitment of a consultant for this specific task. It is doubtful if the Bureau of Education for Exceptional Students will be able to increase both the communication and assistance necessary to the districts and other consumer groups without additional personnel in this area.

Although the district directors appear generally satisfied with the use of Division of Administrative Hearings attorneys as hearing officers, there is still a need for information about the exceptionality areas and range of programming options to be provided to these attorneys. There is also an educational need

for the provision of accurate information about federal and state laws to parent and advocacy groups. Several directors commented during the interviews with the author about the difficulty encountered when parents have been given erroneous information and false expectations about the schools and P.L. 94-142, particularly.

Third, districts should plan on increasing expenditures for the due process hearings. Exploring options about legal representation for the districts would appear to be wise planning based on the cost data obtained in this study, tentative though it is.

Considerations for Further Study

Several areas which need further investigation are suggested in a review of the data obtained in the study. First, there needs to be a systematic follow-up instituted to insure that the orders of the hearing officers are being implemented, and to evaluate the progress of the children. This follow-up would also give information as to the recidivism level for these first year cases, and the nature of the returning cases if any do occur.

Second, an in-depth examination of the perceptions of the parents, similar to the kind of interview that was done in this study with the district directors, should be done in order to gain information about parent variables that may be significant. It is not known whether the parents who are initiating hearings are representative of all socio-economic levels, or if they had access to correct information about programs, or if the parents feel, as

the directors did, that informal mediation had been attempted in their case.

Third, there is a need to compare Florida's statistics with the data from other states. For example, it would appear that 25% of Florida's hearings being district initiated is high compared to other states, but there is no accurate, accessible information available for comparison purposes.

Comment

Without emphasis on the positive aspects of parent rights in the area of exceptional student education, there is a danger that an adversarial relationship could be fostered by the impartial due process hearing procedures. With an emphasis on the positive aspects, a relationship between parents and school districts in which honest disagreements could be heard yet a spirit of cooperation survive can be fostered. The impartial due process hearing procedure is an acknowledgment that sometimes consensus is not possible about what is "best" for a handicapped child. A due process hearing should be only one part of a committed effort to provide an appropriate education to all handicapped children by both parents and school systems.

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APPENDIX A

INTERVIEW GUIDE
WITH TABULATED RESPONSES WHERE APPROPRIATE

Name of district _____

Name of district director of exceptional student education

_____

Demographic data:

Number of K-12 students enrolled 1978-79 school year _____

Number of ESE programs offered within district _____

1. Please estimate the time involved in your district in preparation for and participation in a due process hearing (expressed in days):

For you as director Mean = 4 days

2. What other district level personnel spent time in preparation for and participation in the hearing(s) in your district (by role):

psychologist, area directors, social workers, visiting teachers, ESE supervisors, placement and staffing specialists

3. Were any school personnel involved in your hearing(s)? If yes, who (by role):

principal, classroom teacher, speech therapists

4. Have your hearing(s) been open or closed?

Open 5

Closed 11

5. In the hearing itself, do you feel that the use of an attorney as hearing officer is:

Desirable 7 yes; 4 no

Necessary 9 yes; 2 no

6. Who was the legal representative of the school district in your hearing(s)?

School board attorney 9

Contracted attorney for this hearing 2

7. Was there legal representation for the parent(s)? 10 yes; 6 no
If yes, was it:

a private attorney 8

a free or low-cost legal aid service attorney 2

8. Was informal mediation attempted prior to the hearing(s)?

Yes=15; No=1

If yes, what mediation efforts were made?

Conference with you 15

Additional testing at district expense 3

Other conferences _____

Other _____

9. What do you think is the most important ingredient of effective mediation?

_____

_____

10. Please estimate the number of cases that might have gone to formal hearing in 1978-79 if informal mediation had not been effective in resolving the disagreement?

Total = 74

11. Was there an advocacy group involved in the hearing(s)?

3 yes; 8 no

If yes, was it a formal or informal organization?

Formal 1

Informal 2

12. Have administrative changes been made in your district as a result of experiencing an impartial due process hearing?

5 yes; 6 no

If yes, what have they been?

Additional staff 0

Designation of a specific staff member to assist in hearing process 3

Other forms, training program

13. Did the decision of the hearing officer in this case (or cases) mean a programming cost for your school district?

2 yes; 14 no

If yes, please describe _____

_____

14. Please furnish me with information regarding direct costs of the hearings. These could be requisitions, purchase orders, invoices, etc., from the attorney who represented the district in the hearing(s), and from transcription and recording agents. I will also need to know the source of funds, i.e., general operating budget, P.L. 94-142 L.E.A., used to pay these direct costs.

THANK YOU!

APPENDIX B

ABSTRACTS OF THE HEARINGS

Hearing 1

Exceptionality: Trainable mental retardation

Issue: Change in placement of the child from educable mentally retarded program to trainable mentally retarded program

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 66 days
Date of hearing to date of order, 101 days

Summary: The 13-year-old student had been previously placed in the program for the educably mentally retarded (EMR) in the same school district. In the school year preceeding the hearing, he had been reassigned to a class for trainable mentally retarded (TMR) in the district. Prior to the placement in the EMR class, he had been in a private school outside the district. The parents had initially agreed to the reassignment to the TMR program, and they had participated in the development of the individual educational plan. However, at the end of the first semester of participation, the parents objected to the continued placement of their son in the TMR program.

Decision: No evidence in the record supported a conclusion that the evaluation and placement of the student in the TMR program was inappropriate. Therefore, the relief requested was denied.

Subsequent appeal or judicial action: None

Hearing 2

Exceptionality: Educable mental retardation

Issue: Geographic location of high school program for educable mentally retarded in district

Initiator of the hearing: Parent

Timeline: Date of hearing request to the hearing date, 22 days
Date of hearing to date of order, 6 days

Summary: The 11th grade student had been riding a school bus 42 miles each day to attend the program for educable mentally retarded in the district, although there was a district high school located within walking distance of the student's home. The district stated that the school near the student's home was over-crowded, and that there was no available space to house the addition of a program for educable mentally retarded. The district also argued that a new high school was under construction and upon its completion space would be available and the district intended housing an educable mentally retarded program at all district high schools at that time. P.L. 94-142 and Section 504 were both cited by the plaintiff in the context of provision of a program as close as possible to the child's home.

Decision: The hearing officer ordered the school district to provide a program for educable mentally retarded students at the school nearer the student's home to be begun by the beginning of the next school year.

Subsequent appeal or judicial action: The district appealed the decision of the hearing officer to the Commissioner of Education. The Commissioner reversed the decision citing the authority of the school district to establish location of programs within the district, and concluding that "federal law and regulations are clear in not seeking to require . . . special education programs at each school."

Hearing 3

Exceptionality: Specific learning disabilities/emotionally handicapped

Issue: Parent request for private school tuition

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 50 days
Date of hearing to date of order, 86 days

Summary: The nine-year-old student had been served in both the specific learning disabilities and emotionally handicapped programs in the school district for more than a year. The staffing committee in recommending the time in program for the school year in dispute had considered a self-contained program, but rejected that option as being too restrictive an environment. The student had shown consistent progress in the resource-mainstream program. The parent, however, felt that the child needed a full-time program in a private school.

Decision: The relief requested by the parent was denied, based on the compliance of the school district with the requisite appropriate program as required by law.

Subsequent appeal or judicial action: None

Hearing 4

Exceptionality: Specific learning disabilities

Issue: Parent request for private school tuition

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 49 days
Date of hearing to date of order, 108 days

Summary: The 15-year-old student was staffed at the beginning of the school year in which the hearing occurred for the specific learning disabilities program. The parents agreed that the child met the criteria for the program, but they did not agree that either of the two placement alternatives offered by the school district constituted an appropriate program. They withdrew the child from the school system and enrolled him at a private school. The district contended there was no contract with the private school in question, and that the district had an appropriate placement for the student in the system.

Decision: The relief requested by the parents was denied. The hearing officer found that there was no evidence that the school system had failed to provide an appropriate program, and that even if it had not had an appropriate program, there was no evidence to show that the private school in question met the criteria for approval for contracting special education services.

Subsequent appeal or judicial action: None

Hearing 5

Exceptionality: Emotionally handicapped

Issue: Disagreement with the district's placement of the child in the emotionally handicapped program

Initiator of the Hearing: Parent

Timeline: Date of request to the hearing date, 39 days
Date of hearing to date of order, 98 days

Summary: The parent had signed a consent for placement of the child in the district's emotionally handicapped program at the close of the preceeding school year, but requested a due process hearing the following fall to have the child removed from the program. The parent failed to appear at the time of the hearing, and the attorney representing the parent was not able to make contact with her. The hearing was delayed for an hour while the attorney attempted to locate her, but then proceeded, with the attorney entering only the letter from the parent requesting the hearing. The hearing officer entered an Entry of Default by virtue of the parent's failure to appear at the hearing, which gave the parent 20 days in which to show cause in the case. A letter was received by the hearing officer from the parent in which she stated that she had been ill on the day of the hearing. A second 20 day period was given the petitioner to submit any additional findings, but none was entered.

Decision: The relief sought by the parent was denied.

Subsequent appeal or judicial action: None

Hearing 6

Exceptionality: Emotionally handicapped

Issue: Appropriateness of a specific class in a program

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 40 days
Date of hearing to date of order, 100 days

Summary: The fifth-grade student had been placed in a program for emotionally handicapped in the same district for three years. The parent indicated that this particular class exhibited a "distinct lack of discipline," and alleged an absence of any "true curriculum." The parent wanted the child transferred to another class. The school district's presentation of evidence included both lesson plans for the total class and the individual educational plan which had been developed for the student. Documentation of handling of disciplinary incidents was also included in the district's evidence.

Decision: The placement provided by the district was appropriate. Therefore, the relief sought by the parent was denied.

Subsequent appeal or judicial action: None

Hearing 7

Exceptionality: Emotionally handicapped

Issue: Refusal of the parent to give consent for placement in the emotionally handicapped program

Initiator of the hearing: District

Timeline: Date of request to the hearing date, 19 days
Dateof hearing to date of order, 35 days

Summary: The seven-year-old student had been referred to psychological evaluation because of "disruptive and aggressive" behavior. The parent gave consent for the district's evaluation. The results of the evaluation indicated that the academic and social progress of the child was being hampered by an emotional handicap. The parent attended a staffing conference with district and school personnel, at which placement in a self-contained class for emotionally handicapped students was recommended by the district and school representatives. The parent initially signed consent for the placement, but subsequently withdrew it.

Decision: The school system complied with all legal requirements in the evaluation and placement process and the placement recommended by the district was deemed appropriate by the hearing officer.

Subsequent appeal or judicial action: None

Hearing 8

Exceptionality: Speech and language impaired

Issue: Change in the location of the student's assigned self-contained language class was done without parental consent; whether this constituted a change in placement and, therefore, required consent

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 34 days
Date of hearing to date of order, 73 days

Summary: The student had attended a self-contained language impaired class at an elementary school in the district during the 1977-78 school year, and the review of the individual educational plan at the end of the school year recommended continuation in the program. The parent agreed to the plan. During the summer the district reassigned the student to a self-contained language class that was closer to the student's home. This reassignment was based on an administrative decision, and no staffing was held with the parent. The district presented evidence at the hearing related to the comparability of the classes, and a reduced amount of time for transportation was necessary for the child. The district contended that there is no requirement in the law to specify location of the program in the individual educational plan.

Decision: The school system complied with all legal requirements for the placement and the location of the program was acceptable.

Subsequent appeal or judicial action: Parent initiated judicial action in U.S. District Court, March, 1979.

Hearing 9

Exceptionality: Specific learning disabilities

Issue: Refusal of the parent to give consent for placement in the specific learning disabilities program

Initiator of the hearing: District

Timeline: Date of request to the hearing date, 6 days
Date of hearing to date of order, 93 days

Summary: The 15-year-old student transferred to the school district from another district in Florida at the beginning of the 1978-79 school year. He had been placed in the specific learning disabilities program in the previous school district, and a review of the records by the receiving school district led the school personnel to recommend continuation. Additional testing done by the school district was consistent with continued placement. The parent initially consented to the placement in the specific learning disabilities program, but later withdrew their consent.

Decision: The placement recommended by the district was appropriate.

Subsequent appeal or judicial action: None

Hearing 10

Exceptionality: Educable mentally retarded

Issue: Parent request for private school tuition

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 34 days
Date of hearing to date of order, 55 days

Summary: The eight-year-old child had been withdrawn from the public school system, where he had been placed in the district's educable mentally retarded program, and entered in a private school by the parents. The teacher of the educable mentally retarded class had requested a reevaluation to determine whether the educable mentally retarded program was the appropriate placement for the student. The psychological evaluation was inconclusive, and the school psychologist recommended further evaluation. Before the additional testing was arranged, however, the parents withdrew the child from the district and enrolled him in the private school.

Decision: The child had been properly identified and placed in the public school system, and there was no evidence to show that the private school in question met the criteria for approval as a non-public school furnishing special education to public school students. Therefore, the parent's request was denied.

Subsequent appeal or judicial action: None

Hearing 12

Exceptionality: Specific learning disabilities

Issue: Parent request for private school tuition

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 124 days
Date of hearing to date of order, 83 days

Summary: The 14-year-old student had been placed in a self-contained class for children with specific learning disabilities in the school district for the two previous years. During that time, all academic instruction was provided in the special class, but the student participated in music, physical education, and library activities with students in the regular program. Psychological reevaluation was done in the spring of the school year preceeding the hearing, and was done at the request of the student's special education teacher for the purpose of updating information. This reevaluation indicated that the student had made progress commensurate with what might be "reasonably" expected. Again, a self-contained program placement for the students with learning disabilities was recommended by the district personnel. The parents, however, placed him in a private residential facility at the beginning of the year in which the hearing was requested, and asked for tuition reimbursement from the school district.

Decision: The school district had provided an appropriate program of special instruction and placement in a more restrictive environment would not be in the student's best interest.

Subsequent appeal or judicial action: None

Hearing 13

Exceptionality: Educable mentally retarded/emotionally handicapped

Issue: Refusal of the parent to give consent for placement in the educable mentally retarded and emotionally handicapped programs

Initiator of the hearing: District

Timeline: Date of request to the hearing date, 204 days
Date of hearing to date of order, 60 days

Summary: The district initiated the hearing over the refusal of the parent to give written consent for the placement of the first grade student in the educable mentally retarded and emotionally handicapped programs in the district. The student had been referred the previous school year, and the parent had given consent for the psychological evaluation by the district. The staffing committee which considered the results of the evaluation recommended the special education placement, but the parent disagreed that special education was in the child's best interest and refused consent. The proposed placement did not involve a change of school for the child.

Decision: The district had properly identified and evaluated the student, and the student's placement recommended by the district was appropriate.

Subsequent appeal or judicial action: None

Hearing 14

Exceptionality: Emotionally handicapped

Issue: Provision of occupational therapy services in the emotionally handicapped program

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 154 days
Date of hearing to date of order, 98 days

Summary: The eight-year-old child was enrolled in a self-contained class for emotionally handicapped students in the district. Previously, he had been classified as a specific learning disabled student, and served in a program in the same school district. He had also been evaluated at a large medical center, and by a physician in the immediate area, and had been reported to need the services of an occupational therapist to assist him in the sensory integration area. The district contended that the child's special education teacher was trained in the instruction of children with fine motor problems, and that the curriculum did address the same areas in dispute.

Decision: The placement in the emotionally handicapped program was appropriate, but that the services by a specially trained and qualified occupational therapist would be necessary to meet the legal requirements of an appropriate program.

Subsequent appeal or judicial action: None

Hearing 15

Exceptionality: Emotionally handicapped

Issue: Parent request for private school tuition

Initiator of the hearing: Parent

Timeline: Date of request to the hearing date, 51 days
Date of hearing to date of order, 84 days

Summary: The 14-year-old student had been in a variety of placements (SLD, EMR, EH) in the school system in the district in which the hearing occurred. During the year prior to the date of the hearing she had been admitted to a hospital psychiatric unit and was evaluated by a team from the regional diagnostic system. Their report recommended a residential treatment program but she was placed on homebound status. The parent participated in the development of the individual educational plan at the beginning of the next school year and concurred with the recommendation that the student live at home and attend a full-time class for emotionally handicapped at a district school. Following her assignment to that class, the parent asked for a review of the individual educational plan within a month. The staffing committee recommended residential placement. No follow-up action was taken by the district, however, and the parents requested the hearing.

Decision: Residential placement was to be provided by the district prior to the beginning of the next school year. The residential placement was to include both "special education" and "related services," either alone or in conjunction with services offered by the district.

Subsequent appeal or judicial action: The district appealed the decision of the hearing officer to the Commissioner of Education. The Commissioner's review upheld the decision of the hearing officer.

Hearing 16

Exceptionality: Speech and language impaired

Issue: Appropriateness of district's evaluation

Initiator of the hearing: District

Timeline: Date of request to the hearing date, 79 days
Date of hearing to date of order, 68 days

Summary: The 14-year-old student had been in a residential placement under a contract between the residential institution and the district school system for several years. The district reevaluated the child prior to the 1978-79 school year to assist in the determination of the most appropriate educational placement for the student. The parent disagreed with the results of the evaluation, and requested that an independent evaluation be done at district expense. The school district then initiated the due process hearing to show that its evaluation was appropriate. The multidisciplinary team that evaluated the student for the district included psychological, educational, and speech and language specialists.

Decision: The district's evaluation was appropriate, and the parent was not entitled to an independent evaluation at district expense.

Subsequent appeal or judicial action: None

APPENDIX C

SUMMARY CHART OF CHARACTERISTICS OF THE HEARINGS

District Size	Exceptionality	Level of Student	Issue of Concern*	Initiator of Hearing	Parent Representation	Decision	Hearing Open or Closed
Medium	EMR/EH	Elementary	2	Parent	Attorney	District	Open
Medium	EMR	Secondary	5	Parent	Self	Parent/ Reversed by Comm.	Open
Large	Sp/Lang	Secondary	7	District	Attorney	District	Closed
Small	SLD	Secondary	1	Parent	Attorney	District	Closed
Large	EH	Elementary	1	Parent	Attorney	Stipulated Agreement	Closed
Medium	EH	Elementary	6	Parent	Attorney	Parent	Closed
Large	Sp/Lang	Elementary	4	Parent	Attorney	District	Closed
Large	EH	Secondary	1	Parent	Attorney	Parent	Closed
Small	SLD	Secondary	2	District	Self	District	Closed
Large	EH	Elementary	3	Parent	Self	District	Closed
Large	EH	Elementary	2	Parent	Attorney	Default District	Closed
Small	EMR	Elementary	1	Parent	Self	District	Closed
Medium	SLD	Secondary	1	Parent	Attorney	District	Open
Large	EH	Elementary	2	District	Self	District	Closed
Medium	TMR	Secondary	2	Parent	Attorney	District	Open
Large	SLD/EH	Elementary	1	Parent	Self	District	Open

Appendix C - Continued

*Key to Issue of Concern

1. Private school tuition
2. Classification
3. Specific class change
4. Location change without IEP revision
5. Geographic location within district
6. Support service (OT)
7. Appropriateness of district evaluation

BIOGRAPHICAL SKETCH

Linda Batson Stevens was born in Hattiesburg, Mississippi, on August 20, 1936. She attended the University of Southern Mississippi where she earned a bachelor's degree in speech and hearing and a master's degree in speech pathology. She was graduated from the University of Florida in 1973, with a specialist's degree in educational administration.

Linda Stevens was employed by the Panama Canal Zone government as a school speech therapist for two years. Since 1966, she has been employed by the School Board of Alachua County, Florida, as a speech clinician, teacher of educable mentally retarded students, and coordinator of the Alachua Regional Diagnostic and Resource System. In 1976, she was appointed director of exceptional student education for the Alachua County schools. She has served as president of the Florida Council of Special Education Administrators, 1978-80.

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Education.

Charles Forgnone

Charles Forgnone, Chairman
Professor of Special Education

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Education.

Thomas B. Abbott

Thomas B. Abbott
Professor of Speech

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Education.

Robert F. Algozzine

Robert F. Algozzine
Associate Professor of Special Education

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Education.

Ralph B. Kimbrough

Ralph B. Kimbrough
Professor of Educational Administration and Supervision

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Doctor of Education.

Cecil D. Mercer

Cecil D. Mercer
Associate Professor of Special Education

This dissertation was submitted to the Graduate Faculty of the Department of Special Education in the College of Education and to the Graduate Council, and was accepted as partial fulfillment of the requirements for the degree of Doctor of Education.

December, 1979

Dean, Graduate School